

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1553 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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CHETAN BHIKHABHAI RATHOD - Applicant(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MEHUL H RATHOD for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2007

ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives
service of rule on behalf of the respondents.
With the consent of the learned advocates
appearing on behalf of the respective parties,

this matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner – original complainant has prayed for an appropriate writ, direction and/or order directing the respondents to transfer the investigation of complaint / FIR being I CR No.54 of 2007 registered with Tharad Police Station dated 25.5.2007 to C.I.D. Crime or any other independent agency with the direction to complete the investigation within scheduled time and/or directing the respondent Nos.2 and 3 to carry on investigation directly or to appoint any other independent agency other than Tharad to carry out the detail investigation under the supervision of respondent Nos.2 and 3 and to arrest the accused.

3. It is the case on behalf of the petitioner – original informant – original complainant that his daughter – Parvatiben (now deceased) got married with one Buchiya Varjanbhai Lavabhai and

sister of Varjangbhai got married with Pravin (brother of deceased) in Sata System on 27.11.2005. It is the case on behalf of the petitioner that deceased Parvatiben came to her parental house and informed that her husband and in-laws i.e. mother-in-law and sister-in-law are physically torturing her. That in the month of May – 2007, deceased Parvatiben telephonically called her mother and informed that her husband – Varjangbhai and mother-in-law and sister-in-law had beaten her mercilessly and stated that they want to kill her. That one Parbatbhai (maternal uncle of deceased) telephonically informed the petitioner that the husband – Varjang, mother-in-law and sister-in-law of the deceased Parvatiben have killed her by beating her mercilessly and forcefully administering poisonous drug. It is further case on behalf of the petitioner that the petitioner and other relatives reached to Tharad and saw dead body of the deceased Parvatiben and they found number of injury marks on the dead body. That the petitioner reported to the police on 27.5.2005

for registering the complaint but the Tharad Police Station refused to register the complaint under section 302 of the Indian Penal Code and forced the petitioner to give complaint in terms that is Investigating Agency a case of suicide or accidental death and the petitioner refused to do so. It is the case on behalf of the petitioner that as the P.S.I., Tharad Police Station refused to register the complaint, the petitioner and his relatives telephonically talked to the D.S.P., Banaskantha and office of the D.I.G., Kutch Range who in turn telephonically instructed the Dy.S.P., Deodar to register the complaint in terms that the petitioner is disclosing before the authority and only thereafter, the complaint of the petitioner was registered before Dy.S.P., Deodar as I Cr No.54 of 2007 of Tharad Police Station for the offences punishable under sections 302, 498(A) & 34 of the Indian Penal Code. It is the case on behalf of the petitioner that even the Medical Officers were also acted in hand in gloves with the offenders and the subordinate

police staffs of the Tharad Police Station and therefore the petitioner gave application to the P.S.I., Tharad to take appropriate action against the Medical Officers, however, no acknowledgement was given. That on 16.6.2007 the petitioner gave application to the D.S.P., Banaskantha to issue direction to arrest the absconding offenders but no action was taken. That according to the petitioner, the petitioner gave one application dated 17.6.2007 to the S.P./P.S.I., informing that the police staff are shielding the real offenders and not issuing direction to arrest the absconding offenders, however, still no action was taken. As per the petitioner, the petitioner gave complaint on 17.6.2007 itself to the P.S.I., Tharad and gave full particulars and details of the persons who are knowing about the alleged crime but no action was taken. That on 1.7.2007 the complainant's son – Pravinbhai Rathod gave an application to D.S.P., Banaskantha to arrest the real culprit. It is the case on behalf of the petitioner that the petitioner made a detailed

representation to the Hon'ble Home Minister on 6.7.2007 with a copy to the different authorities, still no action was taken. It is the case on behalf of the petitioner that application for anticipatory bail of the absconding offenders were rejected by the learned Sessions Court on 2.7.2007 and thereafter by this Court still the accused persons were not arrested. It is further submitted that inspite of repeated requests, no investigation was carried out even towards the role of the police staff of Tharad Police Station or the Doctors who have performed post mortem and gave the report that no external injury marks are shown. It is submitted that the statement of the independent persons knowing about the crime are also not recorded and that is how, the police authorities are trying to cripple the case and therefore, the petitioner – original complainant has preferred the present petition for the aforesaid reliefs.

4. Shri Mehul H. Rathod, learned advocate appearing

for the petitioner – original complainant has submitted that inspite of the fact that in the Inquest Panchnama there is a specific mention about the injury marks on the body, more particularly, some white and reddish liquid material found on the mouth of the deceased still the doctors who have performed the post mortem in Column No.17 it is mentioned that no signs of external injury on face, head, neck and/or other places. It is submitted that on seeing the photographs even a layman can observe the injury marks on the body and still the investigation is not carried out in a fair manner and in a right direction and therefore, it is requested to transfer the investigation from the present Investigating Officer of Tharad Police Station.

5. On the other hand, Shri M.R.Mengde, learned APP has submitted that during pendency of the present proceedings even the further statement of the doctor who has performed the Post Mortem is recorded and according to the doctor, PM

Lividity has been found in reddish blue in colour and the same were not due to any injury and therefore, in column No.17 in the Post Mortem there is no reference to any injury mark on the dead body. It is further submitted by him that even the Post Mortem and the photographs are referred to B.J.Medical College for their expert opinion and on receipt of the same further investigation will be carried out. It is submitted that as the investigation has been carried out by the Investigating Officer in a right direction and without favour, it is requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. On considering the Inquest Panchnama; photographs annexed to the present petition, more particularly, pages – 22 and 23 and the Post Mortem report, it prima facie appears to the Court that the the investigation of the aforesaid case has not been carried out by the

Investigating Officer of Tharad Police Station in a fair manner and in a right direction. What can be seen by the Court and others i.e. injuries on the dead body is unfortunately not seen by the concerned Investigating Officer thus, it can be said that the investigation is not in a right direction. It also prima facie appears considering the Inquest Panchnama as well as the photographs that even considering the Medical Officer's statement, who has performed the Post Mortem, is also required to be interrogated thoroughly and it also appears to the Court that no efforts are made by the Investigating Officer to nab the real culprit and to find out the truth and to investigate the offence and the crime thoroughly. Under the circumstances, the investigation is required to be transferred to any other authority other than the Police Officer of Tharad Police Station, who are at present investigating the FIR / complaint. Considering supporting documents Inquest Panchnama, Photographs, Post Mortem Report, etc., it prima facie appears to the

Court that the investigation by the Investigating Officer of Tharad Police Station is not in a fair manner and in its right direction. Under the circumstances, the investigation from Tharad Police Station is required to be transferred to any other independent agency to find out the real truth and the offenders. This Court is not observing any other things on merits as it may affect and prejudice the further investigation but suffice it to observe that the investigation by the Tharad Police Station is not in its right direction with a view to find out the real culprit and cause of death.

8. For the reasons stated above, petition is allowed and the investigation of complaint / FIR being I CR No.54 of 2007 registered with Tharad Police Station dated 25.5.2007 is hereby directed to be transferred to the C.I.D. (Crime), State of Gujarat. The C.I.D.(Crime) is directed to further investigate the case and aforesaid complaint considering all the

surrounding circumstances and considering the Inquest Panchnama; Photographs and the Post Mortem Report and also expert's opinion and to find out the real culprit and the offenders. Investigation to be initiated by the C.I.D. (Crime) immediately and to be completed as early as possible. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[M.R.Shah, J.]

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